

**Amend Section 25205.5 of the Health and Safety Code to change the refund application date until after the Department of Toxic Substances Control has determined whether or not surplus funds are available.**

**Source: Special Taxes Department - Environmental Fees Division**

Under existing law, Section 25205.5 of the Health and Safety Code imposes a fee on a generator for each generator site for each calendar year unless the generator has paid a facility fee or received a credit per Section 25205.2(i) for each specific site for the calendar year for which the fee is due. The fee is divided into different tiers based on the tonnage of waste generated with a significant incremental increase in the fee as a generator produces more waste and moves from one tier to the next.

Section 25205.5 also provides that a generator of hazardous waste is eligible for a refund of all, or part of, the state generator fee paid if all of the following apply:

- The generator paid an inspection fee to a Certified Unified Program Agency (CUPA), which imposed the fee as part of a single fee system and fee accountability program in compliance with Section 25404.5;
- The generator received a credit for the generator fee or generator surcharge, as provided in Section 43152.7 or 43152.11, respectively, for fees paid to a local hazardous waste management program pursuant to a Memorandum of Understanding filed with the Department of Toxic Substances Control (DTSC) for waste generated in 1996; and,
- The DTSC certifies that funds are available to pay all or part of the refund.

Section 25205.9 of the Health and Safety Code requires the DTSC, on or before June 30 of each year, to determine if there are surplus funds in the Hazardous Waste Control Account and allocate the surplus, upon appropriation by the Legislature, to pay the refunds provided by Sections 25205.5(h) and 25205.5(i).

To be eligible for a refund, a generator must submit an application for refund to the Board of Equalization (Board) by March 31 of the fiscal year during which the generator paid the generator fee. Accordingly, a generator must submit an application to the Board for a possible refund of state generator fees paid approximately 3 months before the DTSC determines whether or not there are surplus funds available to pay the refunds. An application received after March 31 is void, not processed by the Board, and returned to the applicant. In 1999 and 2000, the Board has denied all claims for refunds because the DTSC has not certified that there are surplus funds available for refunds.

This proposal would simply allow a generator to ascertain prior to submitting a refund application whether refunds will be issued by postponing the filing date until

after the DTSC determines whether surplus funds are available to pay the refunds. This proposal is intended to save fee payers and the Board the expense of preparing and processing claims for those fiscal years when surplus funds are not determined to be available. This change would eliminate a time consuming and unnecessary refund claim process for both fee payers and the Board in those years when funds will not be available for refunds.

*Section 25205.5 of the Health and Safety Code is amended to read:*

25205.5. (a) In addition to the fee imposed pursuant to Section 25174.1, every generator of hazardous waste, in the amounts specified in subdivision (c), shall pay the board a generator fee for each generator site for each calendar year, or portion thereof, unless the generator has paid a facility fee or received a credit, as specified in Section 25205.2, for each specific site, for the calendar year for which the generator fee is due.

(b) The base fee rate for the fee imposed pursuant to subdivision (a) is two thousand seven hundred forty-eight dollars (\$2,748).

(c) (1) Each generator who generates an amount equal to, or more than, five tons, but less than 25 tons, of hazardous waste during the prior calendar year shall pay 5 percent of the base rate.

(2) Each generator who generates an amount equal to, or more than, 25 tons, but less than 50 tons, of hazardous waste during the prior calendar year shall pay 40 percent of the base rate.

(3) Each generator who generates an amount equal to, or more than, 50 tons, but less than 250 tons, of hazardous waste during the prior calendar year shall pay the base rate.

(4) Each generator who generates an amount equal to, or more than, 250 tons, but less than 500 tons, of hazardous waste during the prior calendar year shall pay five times the base rate.

(5) Each generator who generates an amount equal to, or more than, 500 tons, but less than 1,000 tons, of hazardous waste during the prior calendar year shall pay 10 times the base rate.

(6) Each generator who generates an amount equal to, or more than, 1,000 tons, but less than 2,000 tons, of hazardous waste during the prior calendar year shall pay 15 times the base rate.

(7) Each generator who generates an amount equal to, or more than, 2,000 tons of hazardous waste during the prior calendar year shall pay 20 times the base rate.

(d) The base rate established pursuant to subdivision (b) was the base rate for the 1997 calendar year and the board shall adjust the base rate annually to reflect increases or decreases in the cost of living, during the prior fiscal year, as measured by the Consumer

Price Index issued by the Department of Industrial Relations or by a successor agency.

(e) The establishment of the annual operating fee pursuant to this section is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The following materials are not hazardous wastes for purposes of this section:

(1) Hazardous materials which are recycled, and used onsite, and are not transferred offsite.

(2) Aqueous waste treated in a treatment unit operating, or which subsequently operates, pursuant to a permit-by-rule, or pursuant to Section 25200.3 or 25201.5. However, hazardous waste generated by a treatment unit treating waste pursuant to a permit-by-rule, by a unit which subsequently obtains a permit-by-rule, or other authorization pursuant to Section 25200.3 or 25201.5 is hazardous waste for purposes of this section.

(g) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(h) (1) A generator who pays a hazardous waste generator inspection fee to a certified unified program agency, which is imposed as part of a single fee system and fee accountability program that are both in compliance with the requirements of Section 25404.5, shall be eligible for a refund of all, or part of, the generator fee paid pursuant to subdivision (a) if both of the following conditions apply:

(A) The generator received a credit pursuant to Section 43152.7 or 43152.11 of the Revenue and Taxation Code for fees paid for hazardous waste generated in 1996.

(B) The department certifies, pursuant to subdivision (b) of Section 25205.9, that funds are available to pay all or part of the refund.

(2) A generator who is eligible for a refund pursuant to paragraph (1) shall submit an application for that refund to the board by ~~March 31~~ September 30 following the fiscal year during which the generator paid the generator fee pursuant to subdivision (a). An application for a refund postmarked after ~~March 31~~ September 30 is void, shall not be processed by the board, and shall be returned to the applicant.

(i) (1) A generator who transfers hazardous materials to an offsite facility for recycling at that offsite facility or another offsite facility shall be eligible for a refund of all, or part of, the generator fee paid pursuant to subdivision (a) if all of the following conditions apply:

(A) The offsite facility to which the hazardous materials are manifested pays a facility fee pursuant to Section 25205.2.

(B) The amount of hazardous materials transferred to the offsite facility and recycled there, when deducted from the total tonnage of hazardous waste

generated at the generator's site, results in the generator becoming eligible for a generator fee that is lower than the fee paid pursuant to subdivision (a).

(C) The hazardous materials transferred to the offsite facility are not burned in a boiler, industrial furnace, or an incinerator, as those terms are defined in Section 260.10 of Title 40 of the Code of Federal Regulations, used in a manner constituting disposal, or used to produce products that are applied to land.

(D) The department certifies, pursuant to subdivision (b) of Section 25205.9, that funds are available to pay all or part of the refund.

(2) A generator who is eligible for a refund pursuant to paragraph (1) shall submit an application for that refund to the board by ~~March 31~~ of September 30 following the fiscal year during which the generator paid the generator fee pursuant to subdivision (a). An application for a refund postmarked after ~~March 31~~ September 30 is void, shall not be processed by the board, and shall be returned to the applicant.

(j) (1) The amendment of this section made by Chapter 1125 of the Statutes of 1991 does not constitute a change in, but is declaratory of, existing law.

(2) The amendment of subdivision (a) of this section made by Chapter 259 of the Statutes of 1996 does not constitute a change in, but is declaratory of, existing law.